



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
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GREGORY A. WHIRLEY
ACTING COMMISSIONER

October 30, 2005

Memorandum

To: Members, 95 HOT Lane PPTA Advisory Panel

From: Barbara W. Reese

Subject: Recommendation and Issues for the Panel's Consideration

The role of the Advisory Panel is to use evaluation and selection criteria to determine whether the project proposal promotes the Commonwealth's transportation goals and serves the public interest. The PPTA Guidelines under which the two proposals, 95 Express and I-95/395 Bus Rapid Transit/HOT Lanes, were submitted outline the items which we are to consider in making our recommendations.

Because I will not be with you in person this week, I cannot vote. Therefore, I am providing you with my summary of areas of consideration and recommendation for the Panel's consideration. First, let me start by saying that I endorse the comments made by Al Harf and Dan Tangherlini on October 28, 2005.

Four Areas of Consideration

Area 1. Experience: Both teams have laudable construction experience building transportation infrastructure. Transurban's toll road operations experience, as well as commitment to be a party to any comprehensive agreement, gives them an edge. It is clear from the proposal and the additional information provided that the team understands that the I-95 facility is part of a larger system that must be operated efficiently and effectively.

While Cofiroute has solid experience in toll road operations, a critical difference is that Cofiroute is proposed as a subcontractor to the Commonwealth. This concept is a disconnect to their preferred financing plan that utilizes IRS Rule 63-20

Similarly, while the concept of investing in a traffic management center is endorsed, limiting it to the I-95 corridor, is a limited view on the operations of the entire interstate network system throughout the region. It continues to be unclear what the specific long-

term investment (i.e. "skin in the game") is that Clark/Shirley would make after construction is complete.

Area 2: Cost: The environmental work that must be done before any improvements to the corridor can occur will outline what must be done. However, based on the project being proposed by each team, the 95 Express proposal was closer to the comparative cost for the same project proposal developed by VDOT technical staff.

Area 3: Public Transportation Investment: Both teams recognize the importance of this investment to the Corridor. I support Mr. Harf's recommendations regarding considerations that should be forwarded to the Commissioner.

Area 4: Financing: Throughout the Advisory Panel's work, the I-95/395 Bus Rapid Transit/HOT Lanes team laid out in detail various financing options they were willing to pursue with the Commonwealth and a solid understanding of the differences between the options. The fundamentals of these financing options have not changed throughout the Panel's deliberations. As outlined in the financial evaluation of the proposal provided to the Panel in September, there will be items of negotiation and decisions that will have to be made once environmental work is completed and more detailed traffic information is developed. These issues include:

- Traffic projections that are understood by the MPO traffic modelers for both affected MPOs;
- No repayment of equity investment until senior debt service and TIFIA repayments (if applicable) are also being made; and
- A reasonable return on equity after transit investment if a concession model is employed.

In addition to an equity investment by the team, the Fluor Corporation committed a corporate guarantee. A review of their financial capability showed solid financial health and solid credit ratings. The same holds for Transurban Group which will need to ensure a U.S.-based performance guarantee of Transurban Limited whose asset to liability ratio is significantly less than that of the Group.

The 95 Express Team, while making broad statements about a private investment if needed and to be cost-effective, has also made strong statements regarding why equity investments and concession models should not be considered. Because of questions and comments voiced by the Panel in October a renewed effort to offer the possibility of financial investment in the project has reappeared. The role of the Panel is not to negotiate, but rather to evaluate the information provided in the proposal.

As noted in the September financial evaluation, Clark Construction Group, LLC is a majority-owned (and privately held) subsidiary of Clark Enterprises, Inc., a privately held company and Shirley Contracting Company, LLC is an independent operating subsidiary of Clark Construction Group, LLC. The independent financial evaluation of their

financial capability can not be released to the public in accordance with Section 2.2-3705.6 of the *Code of Virginia*.

A letter of sureties states that 95 Express LLC has a bonding capacity of \$2.5 billion.

Recommendation

My advice to the Panel is that it recommend that the Commissioner consider moving into negotiations with the I-95/395 Bus Rapid Transit/HOT Lanes team with the issues and concerns outlined in the September financial evaluations and in this memorandum incorporated.